

Tuesday, July 18, 2006

The Board met at its offices at 450 N Street, Sacramento, at 10:00 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARING

Vernon C. Sorenson, MD., PC., 255501 (UT)

October 11, 2002, \$122,064.00 Tax

For Petitioner:

Joseph F. Micallef, Representative

Joseph F. R. Micallef, Representative

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's use of the aircraft qualifies for common carrier exemption under Revenue and Taxation Code section 6366.1.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Clifford F. Swanke, 328680

2001, \$957.09 Assessment

For Appellant:

Clifford F. Swanke, Taxpayer

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the assessment, which is based on a federal action.

Whether respondent abused its discretion in refusing to abate interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.1)

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

SPECIAL TAXES APPEALS HEARING

California Automobile Insurance Company, 127684, 139404

1-1-98 to 12-31-99, \$87,217.62 Tax

1-1-00 to 12-31-00, \$76,911.00 Tax

For Department of Insurance:

Geoffrey Margolis, Department of Insurance

David K. Okumura, Department of Insurance

For Petitioner:

Derick J. Brannan, Representative

Theodore Stalick, Witness

For Property and Special Taxes Department: Robert Lambert, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether the accrual basis or the cash basis should be used for purposes of calculating and remitting the annual gross premium tax.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department of Insurance 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1602, *Food Products*

Trecia Nienow, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed amendments to Sales and Use Tax Regulation 1602, *Food Products*. Amendments to Regulation 1602 are proposed to provide a clear standard for taxing sales of combination packages that include food and nonfood products (such as gift baskets) sold for a single price and to eliminate obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602. (Exhibit 7.2.)

Speakers were invited to address the Board, but there were none.

Action: The Board deferred this matter to the August 29, 2006, Board meeting and directed staff to prepare a memo addressing the possible liability the Board could encounter with the proposed amendments to Sales and Use Tax Regulation 1602, *food Products*.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Michael A. Olin*, 252307; and, *Paragon Industries, Inc.*, 219180, 246246.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Michael A. Olin, 252307 (UT)

November 10, 2001, \$10,050.64 Tax

Action: The Board deferred consideration of this matter.

Paragon Industries, Inc., 219180, 246246 (KHO)

1-01-00 to 12-31-02, \$10,699.78 Tax

Action: The Board deferred consideration of this matter.

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Roy Edward Dryer, 296116 (KH)

10-01-95 to 12-31-03, \$27,401.72 Tax

Action: Redetermine as recommended by the Appeals Division

Maria Valencia, 349660 (ET)

February 21, 2006, Seizure Date, \$819.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Truman Chao, 349573 (ET)

February 28, 2006, Seizure Date, \$1,964.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Anthony Hemenes, III, 352209 (ET)

April 5, 2006, Seizure Date, \$1,486.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Claudia C. Iniguez, 351326 (ET)

March 15, 2006, Seizure Date, \$37.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Gold Country Women Investment Club, 287988.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Norman Desilva, 327446

2001, \$1,558.00 Assessment, \$33 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Gold Country Women Investment Club, 287988

2000, \$1,800.00 Claim for Refund

2001, \$1,800.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Scott Lockard, 311188

2002, \$983.00 Assessment, \$245.75 Late Filing Penalty, \$253.75 Notice and Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Stephen Vincent Muro, 327861

1995, \$439.30 Assessment

Action: Sustain the action of the Franchise Tax Board.

C. J. Percival, 328129

1986, \$4,927.29 Assessment

Action: Modify the action of the Franchise Tax Board.

Crystal A. Poole, 334621

2003, \$8,735.00 Tax, \$2,183.75 Late Filing Penalty, \$2,183.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Fernando T. Tonolet, 311980

1986, \$509.16 Assessment

Action: Modify the action of the Franchise Tax Board.

Teofilo B. Ulanday, 315120

1987, \$2,385.53 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shuranda Walker, 312584

2004, \$1,020.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Jamark Jackson, 329962

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

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American Capital Resources, Inc., 332009 (OH)

1-1-01 to 12-31-03, \$493,958.66

Action: Approve the redetermination as recommended by staff.

SFC Capital Group Corporation, 332008 (OH)

1-1-01 to 12-31-03, \$57,289.64

Action: Approve the redetermination as recommended by staff.

Flamingo Motors, Inc., 255915 (FH)

10-1-99 to 12-31-02, \$99,794.15

Action: Approve the redetermination as recommended by staff.

Cannon Power Corporation, 264771 (FHB)

7-1-02 to 6-30-03, \$487,008.10

Action: Approve the relief of penalty as recommended by staff.

Muntaser Asad Ammari, 88898 (AS)

1-1-90 to 12-31-92, \$130,953.00

Action: Approve the denial of claim for refund as recommended by staff.

Convergent Commctn Services, Inc., 304338 (OH)

1-1-00 to 6-30-01, \$52,006.92

Action: Approve the denial of claim for refund as recommended by staff.

Wellborn Cabinet, Inc., 156506 (OHC)

10-1-98 to 9-30-02, \$517,095.07

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *EBay, Inc.*, 332996; *Pacificare Hlth Plan Admnstrs, Inc.*, 347470; *Arris International, Inc.*, 195331; and, *Paypal, Inc.*, 332385; Ms. Mandel not participating in *Daimler Chrysler Corporation*, 350015; *EBay, Inc.*, 332996; and, *Paypal, Inc.*, 332385; the Board made the following orders:

Northwest Test & Measurement, Inc., 348780 (GH)

4-1-02 to 6-30-02, \$65,891.87

Action: Approve the credit and cancellation as recommended by staff.

By Design Automotive, Inc., 349925 (AS)

7-1-04 to 9-30-04, \$58,887.98

Action: Approve the credit and cancellation as recommended by staff.

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Marrissa Anne Fernandez, 350965 (EH)

1-1-05 to 9-29-05, \$72,801.16

Action: Approve the credit and cancellation as recommended by staff.

Metro Goldwyn Mayer Studios, Inc., 349492 (AS)

10-1-99 to 9-30-02, \$54,046.80

Action: Approve the refund as recommended by staff.

Comcast of Los Angeles, Inc., 352284 (OH)

1-1-02 to 3-31-02, \$235,388.96

Action: Approve the refund as recommended by staff.

New United Motor Mfg., Inc., 340719 (CH)

7-1-03 to 12-31-03, \$375,326.08

Action: Approve the refund as recommended by staff.

Loveland Industries, Inc., 340484 (KHO)

12-27-04 to 3-27-05, \$67,778.71

Action: Approve the refund as recommended by staff.

Toshiba America Medical Sys., Inc., 349435 (EA)

10-01-02 to 12-31-05, \$127,342.92

Action: Approve the refund as recommended by staff.

Frontier Medical, Inc., 187686 (EA)

1-1-01 to 3-31-02, \$110,171.41

Action: Approve the refund as recommended by staff.

City of El-Centro, 296920 (FHA)

10-1-01 to 9-30-04, \$293,833.54

Action: Approve the refund as recommended by staff.

Ferrari Color, Inc., 316699 (KH)

4-1-02 to 9-30-05, \$208,879.74

Action: Approve the refund as recommended by staff.

Siemens Med. Solutions USA, Inc., 346812 (OHB)

1-1-06 to 3-31-06, \$800,226.95

Action: Approve the refund as recommended by staff.

ATS Systems Oregon, Inc., 304352 (OH)

4-1-00 to 3-31-02, \$255,996.33

Action: Approve the refund as recommended by staff.

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Daimler Chrysler Corporation, 350015 CHA)

10-21-05 to 3-23-06, \$446,952.59

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

M & M Cabinets, Inc., 350280 (CH)

10-1-02 to 12-31-05, \$99,824.19

Action: Approve the refund as recommended by staff.

EBay, Inc., 332996 (GH)

7-1-96 to 12-31-02, \$2,523,504.21

Action: Approve the refund as recommended by staff. Mr. Chiang and Ms. Mandel not participating.

Pacificare Hlth Plan Admnstrs, Inc., 347470 (EA)

10-1-01 to 12-31-04, \$837,107.76

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Computer Process Controls, Inc., 345185 (OHC)

10-1-05 to 12-31-05, \$73,407.25

Action: Approve the refund as recommended by staff.

Nabisco, Inc., 207121 (OHA)

10-1-99 to 8-01-01, \$250,779.43

Action: Approve the refund as recommended by staff.

Arris International, Inc., 195331 (OHC)

7-1-99 to 12-31-01, \$1,590,433.65

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Paypal, Inc., 332385 (GH)

7-1-99 to 12-31-04, \$123,027.62

Action: Approve the refund as recommended by staff. Mr. Chiang and Ms. Mandel not participating.

Sprint Communications Company, LP, 344806 (OHA)

10-1-99 to 12-31-02, \$4,149,278.71

Action: Approve the refund as recommended by staff.

Southern Western FCU, 315088 (EA)

4-1-01 to 3-31-04, \$99,128.47

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Aera Energy, LLC., 135130, 141624
8-1-98 to 7-31-01, \$112,275.83

Action: Approve the refund as recommended by staff.

Thrifty Payless, Inc., 353191
1-1-06 to 1-31-06, \$93,860.34

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Cities of Los Angeles and San Jose, 352192

4-1-01 to 12-31-05, \$60,188.00 Tax for each City

Considered by the Board: December 13, 2005

Contribution Disclosures pursuant to Government Code section 15626: Not subject to disclosure.

Speaker: Robert E. Cendejas, Special Counsel, City of Los Angeles

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard voting yes, Ms. Mandel voting no, the Board ordered that the petition for rehearing be granted.

Brenton Motor Works Incorporated, 252420 (FH)

5-9-00 to 3-31-02, \$82,886.08 Tax

Considered by the Board: March 8, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Robert Elliot, 310555

2003, \$5,960.24 Assessment

Considered by the Board: December 5, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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Steve Wachko, 301335

1999, \$1,779.00 Claim for Refund

Considered by the Board: March 7, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Hannah Dawn Swift, 304424

1999, \$850.76 Claim for Refund

Considered by the Board: December 13, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing and modifying its December 13, 2005, decision to show the correct amount of interest to be abated for the time period from October 26, 2003, to April 21, 2004, is \$31.13; in all other respects, the Board's decision shall remain as adopted on December 13, 2005.

SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY

The Disney Store, Inc., 342078 (AC)

10-1-99 to 11-20-04, \$683,091.68

Considered by the Board: May 17, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration to later in the day.

827, Inc., 293778 (UT)

4-12-00 to 4-12-00, \$139,997.80

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Presented for Separate Discussion

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board approved the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

W. A. Dwelle, Inc., 221382, 332363 (MT)

7-1-02 to 12-31-03, \$208,980.17

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Presented for Separate Discussion

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

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TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Unitary Land Escaped Assessment**

Duke Energy Morro Bay (1104)

2005, \$1,603,680.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Graciela Rios*; and, *Riaz and Gulfroze Khan*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce***

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Section 100 changes to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*, as recommended by staff (Exhibit 7.3).

OTHER CHIEF COUNSEL MATTERS**Taxpayers' Bill of Rights Follow-Up Report: Proposed Fact Sheet and Survey**

Todd Gilman, Chief, Taxpayers' Rights Advocates Office, provided a follow-up report and made introductory remarks regarding the proposed Cigarette and Tobacco Products Licensing Act (AB71) fact sheet and survey (Exhibit 7.4).

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted option 1 with the addition of adding the email address to the inspection fact sheet.

Speaker: Ted Machado, Administrative Assistant, California Distributors Association, spoke in favor of the fact sheet.

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ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 7.5).

Robbin E. Blomquist, Associate Tax Auditor, Culver City District Office
Linda Lack, Associate Business Management Analyst, Administration
Department, Headquarters
Kenja A. Miyamoto, Business Taxes Specialist I and District Reviewer, West
Covina District Office

Action: Approve the Board Meeting Minutes of May 22, 2006.

Action: Approve time extensions for Alpine, Amador, Inyo and Mendocino Counties to complete and submit 2006-07 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 7.6).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided an update regarding the Bureau of State Audits' Report on Cigarette and Tobacco Products Licensing Act (AB71) (Exhibit 7.7).

Mr. Hirsig provided an update regarding the Information Technology Contract Awarded to KPMG.

Mr. Hirsig introduced Karen Johnson, Deputy Director, Administration Department, who provided an update regarding the Final Budget Action FY 2006-2007.

Adoption of the 2006-07 Private Railroad Car Tax Rate

David Hayes, Manager, Research and Statistics Section, Legislative Division, made introductory remarks regarding the 2006-07 private railroad car tax rate (Exhibit 7.8).

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2006-07 Private Railroad Car Tax Rate of 1.095 percent.

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Adoption of the 2006 Private Railroad Car Roll

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding the 2006 Private Railroad Car Roll (Exhibit 7.9).

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2006 Private Railroad Car Roll.

Adoption of the 2006 State-Assessed Property Roll

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding the 2006 State-Assessed Property Roll (Exhibit 7.10).

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2006 State-Assessed Property Roll.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JULY 18, 2006

Clifford F. Swanke, 328680

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JULY 18, 2006

Vernon C. Sorenson, MD., PC., 255501 (UT)

Final Action: Mr. Parrish moved to grant the petition. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Chiang referred Regulation 1593, *Aircraft and Aircraft Parts*, to the Business Taxes Committee to issue a Notice of Discussion regarding the “common carrier” and “common carriage” terminology.

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SALES AND USE TAX APPEALS HEARINGS**Pafinco, 217918 (EA)**

10-1-89 to 9-30-01, \$31,206.15 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Petitioner's assignment of certain lease contracts resulted in sales of the leased property.

Whether documentation and inspection fees charged in connection with certain leases are nontaxable.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Philip O. Hamilton, 260719 (KHE)

10-1-99 to 9-30-00, \$401,933.00 Tax, \$40,193.30 Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally responsible under Revenue and Taxation Code section 6829 for the liability of Topline Building Products.

Whether adjustments are warranted to the Department's estimate of Topline's unreported taxable sales.

Whether reasonable cause exists to abate the penalty for failure to file returns.
Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, upon advice of counsel that the Bankruptcy Court's automatic stay does not apply, the Board ordered that the petition be redetermined as recommended by the Appeals Division.**Litton Systems, Inc., 260932, 261345 (AC)**

10-01-97 to 6-30-02, \$61,294.41 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner was entitled to relief under section 6596 based on prior audit advice regarding the reporting of use tax on mobile transportation equipment.

Action: Upon motion of Ms. Yee, seconded by Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

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SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY

The Disney Store, Inc., 342078 (AC)

10-1-99 to 11-20-04, \$683,091.68

Considered by the Board: May 17, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of this matter to August 29, 2006.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:13 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (R&T Code §§ 6901, 7093.5, 30459.1 & 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 12:15 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

ADMINISTRATIVE SESSION**BOARD COMMITTEE MINUTES****Legislative Committee**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Legislative Committee Minutes/recommendations for Agenda Items 1, 2a, 3, 4, 5, 6, 7 and 8 (Exhibit 7.11).

Upon motion of Ms. Yee, seconded by Mr. Parrish and duly carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board approved a neutral position on the penalty, Agenda Item 2b (AB 926 Chu), as recommended by staff.

Mr. Chiang stated for the record that he fully supports all the provisions of the Chu bill.

The Board adjourned at 12:20 p.m.

The foregoing minutes are adopted by the Board on November 21, 2006.